

To: **Mayor and City Council / Economic Development Authority**  
From: **Ryan Schroeder, City Manager**  
**Jim Hartshorn, EDA Director**  
Date: **October 8, 2018**

## Consideration of Development Agreement

### **BACKGROUND INFORMATION:**

We are in receipt of a Development Agreement between HY-VEE, Inc. and the City of West St. Paul and the West St. Paul EDA. The document was drafted by the West St. Paul City Attorney and was signed by HY-VEE on September 26, 2018 (Peter Hosch, Vice President and Nathan Allen, Asst. Secretary). The City and Hy-Vee have been working toward completion of this agreement for an extended period.

The agreement is enclosed for Council consideration. The more salient points follow:

1. Under definitions the “Minimum Improvements” is defined to mean “the construction of an approximately 55,000 square foot (or larger) building for the purpose of a grocery store and related improvements consistent with the Preliminary Plans. Developer will endeavor to maximize the full development potential of the Development Property, including but not limited to considering an increase in the size of the proposed buildings.”

The draft site plan depicts a 68,400 SF store.

Under Article 2.3 of the agreement, the developer has the obligation to construct the minimum improvements subject only to satisfaction of the contingencies denoted in Article 3:

2.3 Representations and Warranties by the Developer. The Developer makes the following representations as the basis for the undertakings on its part herein contained:

In the event the Development Property is conveyed to the Developer, the Developer will construct, operate and maintain the Minimum Improvements on the Development Property in substantial accordance with the terms of this Agreement, the Construction Plans and all local, State and federal laws and regulations, including, but not limited to, environmental, zoning, building code and public health laws and regulations.

Article III of the agreement includes the following contingencies of the parties:

Section 3.1 Developer's Contingencies. Developer's obligations to perform under this Agreement are contingent upon the following:

Developer's acquisition of all of Development Property;

Developer's receipt of a Business Subsidy from the EDA;

Obtaining all governmental approvals necessary for the construction of Minimum Improvements;

Testing results satisfactory to Developer, including, but not limited to soils, wells, engineering, hazardous waste and environmental review;

The satisfaction by the EDA of the EDA's contingencies described in Section 3.2 herein.

3.2 EDA's Contingencies. EDA's obligations to perform this Agreement are conditioned upon the following:

Developer having closed on the purchase of all Development Property.

3.3 Joint Contingencies. Developer and EDA's obligations to perform this Agreement are both conditioned upon the following:

3.3.1 City's establishment of a tax increment financing or tax abatement district for the Development Property;

3.3.2 City's entering into a Memorandum of Understanding with the County regarding the River to River Trail and the Golf Course Property;

3.3.3 EDA's ability to pool a sufficient amount of tax increment financing funds from adjacent tax increment financing districts for the Project or other development funds, if necessary;

3.3.4 Approval by Metropolitan Council for the use of the State Bond Funding for the River to River Trail project, if necessary.

Each of the above contingencies would need to be completed or waived in order for the project to proceed. Of note is that 3.3.2, 3.3.3 and 3.3.4 relate directly to the Dakota County JPA proposed for consideration by the Council. Revenues to provide for the business subsidy noted in 7.4 of the agreement derive in part from satisfaction of these contingencies.

The developer has 18 months after closing on the development property and commencement of construction to complete construction as follows:

4.6 Commencement and Completion of Construction. Subject to Unavoidable Delays, the Developer shall commence construction of the Minimum Improvements following acquisition of all of the Development Property. Subject to Unavoidable Delays, the Developer shall have substantially completed the construction of the Minimum Improvements no later than eighteen (18) months after commencement of construction. All work with respect to the Minimum Improvements to be constructed or provided by the Developer on the Development Property shall be in substantial conformity with the Construction Plans and Developer will not reduce the size of the Minimum Improvements by more than ten percent (10%) without the consent of the EDA, which consent shall not be unreasonably withheld, conditioned or delayed. The Developer shall make such reports as reasonably requested by the EDA regarding construction of the Minimum Improvements, as the EDA deems necessary or helpful in order to monitor progress on construction of the Minimum Improvements.

In November 2017 the City Council, authorized work toward a County JPA which if successfully completed would result in the R2R Greenway being constructed adjacent to the development parcel. As such, negotiations toward this development agreement have included an accommodation for the R2R trailway since. At or about that time the developer signaled that they might be able to accommodate this greenway, which was an evolution from earlier suggestions that accommodation was not probable. Sections 5.3, 5.4, and 5.5 denote how the trail corridor will be accommodated and how trail easements and remnant parcels will be addressed in addition to how Crawford Drive will be engineered and constructed.

5.3 River to River Trail. Developer shall include and show the River to River Trail in the development and grading plans submitted to the City that are consistent with the River to River Regional Greenway Master Plan on file with Dakota County integrating it into the Developer Improvements and any relevant adjacent parcels. Developer shall not, however, be required to construct the River to River Trail. After the City has acquired the property necessary for the River to River Trail, including but not limited to real property legally described as Parcel 2 on Exhibit A, if there are any remnant parcels from the acquisition that are not required for the River to River Trail, the Developer has a right of first refusal to acquire the remnant parcels from the City or the EDA at a price mutually agreed upon between Developer and the City or the EDA; provided the price shall be no greater than the price required by Developer to be paid by the City for the Crawford Drive right of way and land for the River to River Trail. Developer shall exercise such right of first refusal by written notice within 60 days after Developer is made aware that such parcels are available. Any remnant parcels acquired by the Developer from the City or EDA must be incorporated into the Minimum Improvements.

5.4 Crawford Drive. Developer understands that a portion of Crawford Drive may be relocated to accommodate the River to River Trail and agrees to include and show the relocated Crawford Drive in the development plans and Construction Plans submitted to the City that are consistent with the City's intent for such relocation and Developer shall pay for Developer's costs associated with Developer's engineering design plans. Developer will endeavor to, through site design and grading plans, reduce the public expenditures related to relocating Crawford Drive and to the River to River Trail construction. Developer shall contribute \$100,000 to the City for the engineering or construction costs related to the relocation of Crawford Drive. In exchange, the City shall execute a drainage and utility easement for the use of the City's stormwater pond for the benefit of the Development

Property at no cost to Developer. In the alternative and at Developer's sole option, Developer may construct the relocated Crawford Drive. Following such construction, upon proof of payment for such construction costs, any construction costs exceeding \$100,000 shall be reimbursed by the EDA. If Developer elects to construct Crawford Drive, City shall approve the plans, specifications and bids for the project prior to Developer letting the contract.

5.5 Development Property Remnant Parcels. If, after Developer acquires the Development Property and either completes final design of the Minimum Improvements or completes construction of the Minimum Improvements, there are remnant parcels not needed for the Minimum Improvements (and/or other projects, including without limitation an expansion of the Minimum Improvements, which Developer may desire to preserve land to construct in the future), including but not limited to a portion of the real property legally described as Parcel 4 on Exhibit A, the City and EDA shall have a right of first refusal to acquire a portion of any such remnant parcels which are reasonably required for the River to River Trail and/or for Crawford Drive at a price mutually agreed upon by Developer, the City and the EDA; provided the price shall be no greater than the price required by City or EDA to be paid by the Developer for the land described in Section 5.3 that Developer has a right of first refusal to purchase. City or EDA shall exercise such right of first refusal by written notice within 60 days after City and EDA are made aware that such parcels are available.

This project would not happen but for an investment by the City. The reason is that there is a difference between what the developer can pay to package the development parcel and the cost to package the development parcel. Costs are not limited to just acquisition costs but also grading/fill/export of soils, infrastructure, site development and the like. The developer has represented that the gap to meet their required financial metrics is at \$1,585,000. The City is proposing to fill that gap in two ways per section 7.4 below. The first piece is a \$765,000 infusion into the development acquisition upon completion of the items noted below. It is intended that the City allocate revenues from sales of other property to fill this portion of the gap. This payment would be due after completion of the footings for the construction project.

The second piece is a promissory note (payment over time) from the increased property tax received on this parcel through creation of a tax abatement district. The district is intended to be created with a 20-year term but said district would be closed down upon retirement of the note. Further, if at the termination of the 20-year district the note is not retired for whatever reason the obligation for further payments terminates (which is stated in the note).

A tax abatement district would be created prior to a construction start on the development parcel.

7.4 General Terms. The Business Subsidy provided to the Developer shall not exceed \$1,585,000 ("Total Subsidy Amount") and shall be paid to Developer as follows:

(a) \$ 765,000 shall be paid in cash after Developer has completed all of the following:

(1) Acquired all of the Development Property;

(2) Demolished all structures and graded the Development Property in accordance with the approved Construction Plans;

- (3) Conveyed any excess Development Property to the City or County for use as part of the River to River Trail;
  - (4) Executed any easements required in the planning applications, including for trails or other public purposes;
  - (5) Poured the footings for the foundation of the grocery store, as described in the Minimum Improvements.
- (b) Upon issuance of a Certificate of Occupancy for the grocery store, the balance of the Business Subsidy up to the Total Subsidy Amount shall be paid to Developer in a Promissory Note from the City for \$820,000, in the form attached hereto as Exhibit G.

Finally, the developer has no obligation to construct the minimum improvements unless and until they close on the development parcel as is noted in section 10.9 of the agreement.

Section 10.9 Developer shall have no obligations or liability arising out of this Agreement unless and until Developer closes on the purchase of all of the Development Property. In the event Developer does not close on the purchase of all of the Development Property within two (2) years following the full execution hereof, then this Agreement shall be deemed void and of no further force and effect.

The developer has represented that they are prepared to satisfy the requirements of the development agreement. As such, staff is recommending adoption of the agreement.

**FISCAL IMPACT:**

		Amount
Fund:		
Department:		
Account:		

**STAFF RECOMMENDATION:**  
**Adoption of the Agreement**

.